



Exempt Action Final Regulation Agency Background Document

Agency name	Virginia Department of Transportation
Virginia Administrative Code (VAC) citation	24 VAC 30-72
Regulation title	Access Management Regulations: Principal Arterials
Action title	Promulgation of APA-Exempt Regulation and Related Standards to Satisfy Legislative Mandate
Final agency action date	March 21, 2008
Document preparation date	March 27, 2008

When a regulatory action is exempt from executive branch review pursuant to § 2.2-4002 or § 2.2-4006 of the Virginia Administrative Process Act (APA), the agency is encouraged to provide information to the public on the Regulatory Town Hall using this form.

Note: While posting this form on the Town Hall is optional, the agency must comply with requirements of the Virginia Register Act, the *Virginia Register Form, Style, and Procedure Manual*, and Executive Orders 36 (06) and 58 (99).

Summary

Please provide a brief summary of all regulatory changes, including the rationale behind such changes. Alert the reader to all substantive matters or changes. If applicable, generally describe the existing regulation.

Chapters 863 and 928 of the 2007 Acts of Assembly (HB2228 and SB1312, respectively) amended §§ 33.1-13, 33.1-198 and 33.1-199 of the *Code of Virginia*, and added § 33.1-198.1 to the *Code of Virginia*. The legislation requires the Commonwealth Transportation Commissioner (Commissioner) to develop comprehensive highway access management regulations and standards.

The purpose of the regulations and standards is to enhance the operation and safety of the systems of state highways in order to protect the public health, safety, and general welfare while ensuring that private property is entitled to reasonable access to highways. The goals for access management are:

- To reduce traffic congestion and impacts to the level of service of highways, leading to reduced fuel consumption and air pollution;
- To enhance public safety by decreasing traffic crash rates;
- To support economic development in the Commonwealth by promoting the efficient movement of people and goods;

- To reduce the need for new highways and road widening by improving the performance of existing state highways; and
- To preserve public investment in new highways by maximizing their performance.

In response to this directive, regulations ("Access Management Regulations (12/07)") were drafted, along with related access management design standards for entrances and intersections. The regulations and design standards were to be used to manage the location, number, and spacing and design of entrances and intersections, including median openings, turn lanes, traffic signals, and interchanges on the systems of state highways.

Although initial promulgation of the regulations was exempt from the Administrative Process Act (APA) (§ 2.2-4000 et seq. of the *Code of Virginia*), the legislation directed the Commissioner to solicit and consider public comment in their development. The Commissioner was further directed by the legislation to publish the regulations no later than December 31, 2007, to be effective July 1, 2008.

These new regulations and design standards were to replace and supersede the Minimum Standards of Entrances to State Highways (24 VAC 30-71) and Part IV, Entrance Permits, of the Land Use Permit Manual (24 VAC 30-150).

The mandate to develop and promulgate access management regulations is new, but the regulation of entrances is not. The Highway Commission, predecessor to the Commonwealth Transportation Board, originally established minimum standards for entrances in 1946. Part IV of the Land Use Permit Manual (24 VAC 30-150), along with the Minimum Standards of Entrances to State Highways (24 VAC 30-71), served as the basis for the Access Management Regulations (12/07) and the access management design standards for entrances and intersections.

On December 19, 2007, the Office of the Attorney General certified that VDOT had the legal authority, pursuant to Chapter 863 of the 2007 Acts of Assembly, to promulgate the Access Management Regulations (12/07), that the Access Management Regulations (12/07) complied with the requirements of Chapter 863 of the 2007 Acts of Assembly, and that the fourth enactment clause of Chapter 863 of the 2007 Acts of Assembly waived the requirements of the APA with respect to the promulgation of the Access Management Regulations (12/07). The Access Management Regulations (12/07) were published on the VDOT public website in accordance with the mandated publication date of December 31, 2007.

During the 2008 General Assembly, SB370 and HB1572 were enacted to allow for the Access Management Regulations (12/07) to be promulgated in phases. The first phase (initial promulgation of regulations applicable to principal arterials) is exempt from the APA, and the regulations will go into effect July 1, 2008. Subsequent phases (promulgation of regulations applicable to minor arterials, collectors, and local highways) are subject to the APA and will go into effect October 1, 2009. The legislation provided that the general notice concerning proposed Access Management Regulations published in The Virginia Register on October 15, 2007, shall be considered a valid Notice of Intended Regulatory Action pursuant to the APA for promulgation of this second phase.

To accommodate the mandate of Chapters 454 and 274 of the 2008 Acts of Assembly, VDOT revised 24 VAC 30-72-30 of the Access Management Regulations (12/07) and the related design standards for entrances and intersections to remove language related to minor arterials, collectors, and local highways. In response to these directives, the Access Management Regulations: Principal Arterials and the access management spacing standards for entrances, intersections (median openings), and traffic signals in the design standards only apply to highways with a functional classification of principal arterial. The remaining provisions in the design standards are not based on the functional classification of a highway. The Access Management Regulations: Principal Arterials and the related design standards for entrances and intersections will go into effect July 1, 2008. These design standards are included in the Road Design Manual, which is incorporated by reference in the final Access Management Regulations: Principal Arterials. The design standards are available at <http://www.vdot.virginia.gov/accessmgt/>.

In accordance with Chapters 454 (HB 1572) and 274 (SB 370) of the 2008 Acts of Assembly, VDOT will also publish proposed Access Management Regulations and related access management spacing standards for entrances, intersections (median openings), and traffic signals in the design standards, to be applicable to highways with a functional classification of minor arterial, collector, and local. These proposed regulations will be processed in accordance with the APA and are mandated to go into effect October 1, 2009.

In addition, VDOT made the following changes to the Access Management Regulations (12/07) in developing the Access Management Regulations: Principal Arterials to improve clarity and consistency and to more accurately describe procedures:

- 24 VAC 30-72-10. Removed “or his designee” from the definition of “district administrator” and added a separate definition for “district administrator’s designee.” (Language throughout the chapter was amended accordingly to distinguish between the duties and authorities of the district administrator and the district administrator’s designee.)
- 24 VAC 30-72-10. Added a definition for “principal arterial.”
- 24 VAC 30-72-10. Changed the term “urban” to “urban area” and removed the reference to “urban” being an abbreviation for “urban area.”
- 24 VAC 30-72-50. Amendment to provide that appeal of denial or revocation or conditions imposed by a permit is to be made to the district administrator with a further appeal to the Commissioner rather than to the Commissioner directly.
- 24 VAC 30-72-60. Clarified provisions related to VDOT’s allowing reasonably convenient access to a parcel.
- 24 VAC 30-72-70. Provided that mitigation provisions must be taken if an entrance will cause “a significant increase” in delay on a highway, rather than simply “an increase.”
- 24 VAC 30-72-120. Provided that a permit applicant may provide evidence that a shared entrance is not feasible due to “physical constraints, including but not limited to topography, environmentally sensitive areas, and hazardous uses, to creating a shared entrance,” in addition to an inability to reach an agreement with owners of adjacent property.

On April 2, 2008, the Office of the Attorney General certified that VDOT has the legal authority, pursuant to Chapters 863 and 928 of the 2007 Acts of Assembly and Chapters 454 and 274 of the 2008 Acts of Assembly, to promulgate the final Access Management Regulations: Principal Arterials, that the final Access Management Regulations: Principal Arterials are consistent with applicable state and federal law, and that the legislation provides for an exemption from the requirements of the APA in the initial promulgation of this regulation.

Note on Functional Classification

Functional classification means the federal system of classifying groups of highways according to the character of service they are intended to provide and classifications made by the VDOT Commissioner based on the operational characteristics of a highway. Each highway is assigned a functional classification based on the highway’s intended purpose of providing priority to through traffic movement or access to property. The functional classification system groups highways into three basic categories identified as (1) arterial, with two subclasses of “principal” and “minor”, with the primary function to provide through movement of traffic; (2) collector, with the function of supplying a combination of through movement and access to property; and (4) local, with the primary function of providing access to property.

This regulation applies to principal arterials. Principal arterials include the Interstate System, urban freeways and expressways, and other principal arterials. These are major highways in which the highest priority is mobility and the movement of traffic, where access to property is carefully controlled. Principal

arterials will be of national, statewide, or regional importance with moderate to high volumes of traffic traveling relatively long distances at higher speeds. A map of the Principal Arterials for Access Management is available at <http://www.vdot.virginia.gov/accessmgt/>.

Statement of final agency action

Please provide a statement of the final action taken by the agency including (1) the date the action was taken, (2) the name of the agency taking the action, and (3) the title of the regulation.

On March 21, 2008, the Commonwealth Transportation Commissioner approved the Access Management Regulations: Principal Arterials (24VAC30-72). On April 3, 2008, the regulations were delivered to the Registrar of Regulations and posted to the DPB Regulatory Town Hall.

Family impact

Assess the impact of this regulatory action on the institution of the family and family stability.

This regulation is expected to have no direct effect on the institution of family and family stability. However, the regulation will have an indirect benefit to families in the form of a more efficient and safer transportation network in that the regulation is intended to help to reduce traffic congestion and vehicular crash rates and promote efficient movement of goods and people on the state highway system.

Public comment

Please summarize all comments received during the public comment period following the publication of the proposed stage, and provide the agency response. If no comment was received, please so indicate.

This section was added to demonstrate compliance with the legislative requirement that the Commissioner solicit and consider public comment in development of the regulation.

VDOT used a committee-based approach to developing the regulation and soliciting and evaluating comments. A VDOT technical committee representing a broad range of disciplines from Central Office divisions, the regions, districts, residencies, and the Virginia Transportation Research Council prepared the proposed regulations and standards. The technical committee reviewed access management regulations and standards from many different sources to compile the new regulations and related design standards mandated by the legislature. These sources included access management regulations and standards from other states (such as New Mexico, Maryland, North Carolina, Florida, and Michigan), as well as information from the Transportation Research Board (TRB), the Federal Highway Administration (FHWA), the Institute of Transportation Engineers (ITE), and the American Association of State Highway and Transportation Officials (AASHTO).

To assure a wide variety of viewpoints were considered, a multi-step process for gathering public input on the proposed access management regulations and standards was used.

- First, the draft documents were reviewed and refined in August and September 2007 by a policy advisory committee. This committee was composed of external stakeholders, including representatives from the Home Builders Association of Virginia, Virginia Association for Commercial Real Estate, Virginia Association of Counties, the Virginia Section of the Institute of

Transportation Engineers, and the Piedmont Environmental Council, as well as internal stakeholders from VDOT and the Office of the Secretary of Transportation. The committee met from August through November of 2007 to assist in the development of the standards and regulations and to provide input from the members of their organizations.

- Second, to facilitate outreach, a web page (<http://www.virginiadot.org/accessmgt>) was added to the VDOT website. This website provides information on the background and purpose of the access management legislation, access management concepts, the public input process, and opportunities to provide input. The proposed regulations and design standards were posted on the website on October 3, 2007. The proposed Access Management Regulations (12/07) were published in the Virginia Register on October 15, 2007. Comments on the regulation and the related design standards were accepted by email from the website and by U.S. Mail through 5:00 pm on October 29, 2007.
- Third, a public hearing was conducted on October 22, 2007, at the VDOT Asset Management Division offices in the Brookfield Corporate Complex at 6600 West Broad Street in Richmond. Both oral and written comments were accepted at that time. Notice of the public hearing appeared twice in thirteen newspapers across the Commonwealth, on the Virginia Regulatory Town Hall website (www.townhall.virginia.gov), in the Calendar of Events section of the Virginia Register of Regulations, and on the access management web page on the VDOT website (<http://www.virginiadot.org/accessmgt>). Comments and VDOT's response may be reviewed at: <http://www.virginiadot.org/projects/accessmgt/ResponseAccessMgtPublicComments11.20.07.pdf>

Over 250 comments were received from state and regional organizations, local governments, and the general public. The policy advisory committee and the VDOT technical committee evaluated the comments during November and made recommendations on the final access management regulations and standards. VDOT published the final regulations and standards on the VDOT public website site in December 2007 in compliance with legislative mandate.

The Access Management Regulations (12/07) published pursuant to Chapters 863 and 928 of the 2007 Acts of Assembly were intended to apply to all functional classifications of highways. The regulation was amended, pursuant to Chapters 454 and 274 of the 2008 Acts of Assembly, to apply only to principal arterials and to accommodate additional changes described in the "Summary" section of this document, and is published in final form as Access Management Regulations: Principal Arterials.